

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

GREAT AMERICAN INSURANCE COMPANY OF NEW YORK PLAINTIFF

V. CIVIL ACTION NO.1:06CV097 LTS-RHW

LOWRY DEVELOPMENT, LLC DEFENDANT

CONSOLIDATED WITH

LOWRY DEVELOPMENT, LLC PLAINTIFF

V. CIVIL ACTION NO. 1:06CV412 LTS-RHW

GREAT AMERICAN INSURANCE COMPANY
OF NEW YORK; GROVES & ASSOCIATES INSURANCE, INC.;
and CRUMP INSURANCE SERVICES OF MEMPHIS, INC. DEFENDANTS

ORDER

In accordance with the Memorandum Opinion I have this day signed, it is hereby

ORDERED

That the motion [181] of Great American Insurance Company for sanctions for the spoliation of evidence is **GRANTED**;

That the burden of proof that will apply to Great American Insurance Company's claim of mutual mistake in the formation of the insurance policy at issue will be a preponderance of the evidence;

That Great American Insurance Company shall be permitted to introduce evidence concerning the destruction of the evidence in this case and concerning the truthfulness of the account given by Danny Groves concerning his computer;

That an appropriate jury instruction shall be fashioned at the conclusion of the presentation of evidence concerning the inferences or conclusions the jury may draw from the destruction of this computer and the statements thereafter made concerning its disposition.

Upon the filing of a verified statement of the costs and expenses, including attorneys' fees, Great American Insurance Company incurred in connection with this motion for sanctions, I will allow Groves & Associates fourteen days to respond, and I will thereafter consider an award of these costs and expenses as an additional sanction. In light of the pending trial, Great American shall have a period of thirty days following the conclusion of the trial within which to file this statement of costs and expenses.

SO ORDERED this 30th day of November, 2007.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE